

BILL LOCKYER, Attorney General
of the State of California
E. A. JONES III, State Bar No. 71375
Deputy Attorney General
ELAINE GYURKO
Senior Legal Analyst
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-4944
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2019

ED W. ELLO
P.O. Box 3248
Big Bear Lake, California 92315

A C C U S A T I O N

Respiratory Care Practitioner License No. 1711

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On or about May 10, 1985, the Board issued Respiratory Care Practitioner License Number 1711 to Ed W. Ello (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2006, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 3710 of the Code states: “The Respiratory Care Board of
2 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
3 the Respiratory Care Practice Act].”

4 5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and
5 revoke licenses to practice respiratory care as provided in this chapter.”

6 6. Section 3750 of the Code states:

7 “The board may order the denial, suspension or revocation of, or the imposition of
8 probationary conditions upon, a license issued under this chapter, for any of the following
9 causes:

10 “ . . .

11 “(d) Conviction of a crime that substantially relates to the qualifications, functions,
12 or duties of a respiratory care practitioner. The record of conviction or a certified copy
13 thereof shall be conclusive evidence of the conviction. . . .”

14 7. Section 3750.5 of the Code states:

15 “In addition to any other grounds specified in this chapter, the board may deny,
16 suspend, or revoke the license of any applicant or license holder who has done any of the
17 following:

18 “ . . .

19 “(b) Used any controlled substance as defined in Division 10 (commencing with
20 Section 11000) of the Health and Safety Code. . . .

21 “ . . .

22 “(d) Been convicted of a criminal offense involving the consumption or
23 self-administration of any of the substances described in subdivisions (a) and (b), or the
24 possession of, or falsification of a record pertaining to, the substances described in
25 subdivision (a), in which event the record of the conviction is conclusive evidence thereof.
26 . . .”

27 8. Section 3752 of the Code states:

28 “A plea or verdict of guilty or a conviction following a plea of nolo contendere

1 made to a charge of any offense which substantially relates to the qualifications, functions,
2 or duties of a respiratory care practitioner is deemed to be a conviction within the meaning
3 of this article. The board shall order the license suspended or revoked, or may decline to
4 issue a license, when the time for appeal has elapsed, or the judgment of conviction has
5 been affirmed on appeal or when an order granting probation is made suspending the
6 imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the
7 Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of
8 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.”

10 9. Section 3752.5 of the Code states:

11 “For purposes of Division 1.5 (commencing with Section 475), and this chapter
12 [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily
13 injury shall be considered a crime substantially related to the qualifications, functions, or
14 duties of a respiratory care practitioner.”

15 10. Section 490 of the Code states:

16 “A board may suspend or revoke a license on the ground that the licensee has been
17 convicted of a crime, if the crime is substantially related to the qualifications, functions, or
18 duties of the business or profession for which the license was issued. A conviction within
19 the meaning of this section means a plea or verdict of guilty or a conviction following a
20 plea of nolo contendere. Any action which a board is permitted to take following the
21 establishment of a conviction may be taken when the time for appeal has elapsed, or the
22 judgment of conviction has been affirmed on appeal, or when an order granting probation
23 is made suspending the imposition of sentence, irrespective of a subsequent order under the
24 provisions of Section 1203.4 of the Penal Code.”

25 11. Section 492 of the Code states:

26 “Notwithstanding any other provision of law, successful completion of any
27 diversion program under the Penal Code, or successful completion of an alcohol and drug
28 problem assessment program under Article 5 (commencing with section 23249.50) of

1 Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established
2 under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any
3 initiative act referred to in that division, from taking disciplinary action against a licensee or
4 from denying a license for professional misconduct, notwithstanding that evidence of that
5 misconduct may be recorded in a record pertaining to an arrest."

6 COST RECOVERY

7 12. Section 3753.5, subdivision (a) of the Code states:

8 "In any order issued in resolution of a disciplinary proceeding before the board, the
9 board or the administrative law judge may direct any practitioner or applicant found to
10 have committed a violation or violations of law to pay to the board a sum not to exceed the
11 costs of the investigation and prosecution of the case."

12 13. Section 3753.7 of the Code states:

13 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
14 include attorney general or other prosecuting attorney fees, expert witness fees, and other
15 administrative, filing, and service fees."

16 14. Section 3753.1, subdivision (a) of the Code states:

17 "An administrative disciplinary decision imposing terms of probation may include,
18 among other things, a requirement that the licensee-probationer pay the monetary costs
19 associated with monitoring the probation."

20 CONTROLLED SUBSTANCE

21 15. Methamphetamine is a Schedule II controlled substance pursuant to Health
22 and Safety Code Section 11055.

23 FIRST CAUSE FOR DISCIPLINE

24 (Conviction of a Crime)

25 16. Respondent is subject to disciplinary action under sections 3750,
26 subdivision (d), 3750.5, subdivision (d), 3752, 3752.5, and 490 of the Code, in that he was
27 convicted of a crime substantially related to the qualifications, functions or duties of a respiratory
28 care practitioner. The circumstances are as follows:

1 A. On January 9, 2005, San Bernardino County Deputy Sheriffs
2 responded to a domestic disturbance call at respondent's residence. Respondent's wife
3 stated he had forced his way into the residence, yelled and threatened her, and then hit her
4 in the head. Respondent told the deputies they had argued about his wife using
5 methamphetamine, and he said there were drugs in the house. The couple's ten year-old
6 daughter was also in the house. Respondent's wife admitted to using methamphetamine
7 earlier that day which respondent had provided to her. She told the deputies respondent
8 had also used methamphetamine prior to their arrival. Based on respondent's reaction to
9 the tests he was asked to perform, it was determined he was under the influence of a
10 controlled substance. One of the deputies located a small plastic baggie containing a white
11 crystal substance which resembled methamphetamine in an open bedroom drawer.

12 B. On January 11, 2005, a complaint was filed against respondent in a
13 criminal proceeding entitled *People v. Edward Warren Ello*, in Superior Court, San
14 Bernardino County, Case Number MBV25615, charging him with possession of a
15 controlled substance, methamphetamine, a violation of Health and Safety Code section
16 11377(a), a misdemeanor (count 1), use/under the influence of a controlled substance,
17 methamphetamine, a violation of Health and Safety Code section 11550(a), a misdemeanor
18 (count 2), and cruelty to a child by inflicting injury, a violation of Penal Code section
19 273a(b), a misdemeanor (count 3).

20 C. On February 23, 2005, respondent was convicted by a plea of guilty
21 to count 2, use/under the influence of a controlled substance, and count 3, cruelty to a child
22 by inflicting injury. As to count 3, respondent was placed on probation for three years. He
23 was ordered to pay a \$110.00 restitution fine, a \$20.00 surcharge, and complete substance
24 abuse and parenting classes. As to count 2, respondent was placed on diversion for 18
25 months. He was ordered to pay a \$100.00 diversion fee, a \$100.00 restitution fee, and
26 complete a drug diversion program. Count one of the complaint was dismissed.

27 D. Pursuant to Code section 3750.5, respondent's conviction of use or
28 possession of a controlled substance, as more specifically set forth above in subparagraph

1 C, is substantially related to the qualifications, functions or duties of a respiratory care
2 practitioner.

3 E. Pursuant to Code section 3752.5, respondent's conviction of cruelty
4 to a child by inflicting injury, as more specifically set forth above in subparagraph C, is
5 substantially related to the qualifications, functions or duties of a respiratory care
6 practitioner.

7 SECOND CAUSE FOR DISCIPLINE

8 (Use of a Controlled Substance)

9 17. Respondent is subject to disciplinary action under section 3750.5,
10 subdivision (b) of the Code in that he used the controlled substance methamphetamine. The facts
11 and circumstances, set forth in Paragraph 15 of this Accusation, are incorporated herein by
12 reference.

13 PRAYER

14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 16 1. Revoking or suspending Respiratory Care Practitioner License Number
17 1711, issued to Ed W. Ello;
- 18 2. Ordering Ed W. Ello to pay the Respiratory Care Board the costs of the
19 investigation and enforcement of this case, and if placed on probation, the costs of probation
20 monitoring;
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: March 17, 2006

23
24 Original signed by Liane Zimmerman for:
25 STEPHANIE NUNEZ
26 Executive Officer
27 Respiratory Care Board of California
28 Department of Consumer Affairs
State of California
Complainant